



February 1, 2002

Ms. Cathy Bradford
Open Records Coordinator
Texas Parks & Wildlife
4200 Smith School Road
Austin, Texas 78744-3291

OR2002-0479

Dear Ms. Bradford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158250.

The Texas Parks & Wildlife Department (the "department") received a request for "any documents pertaining to the application for a commercial fishing license, along with any and all renewals, citations, violations" pertaining to a named individual. You claim that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. As you did not submit to this office written comments stating the reasons why section 552.108 would allow the information to be withheld, we find that you have waived this exception. *See* Gov't Code §§ 552.301, .302. We have considered the exceptions you claim and reviewed the submitted information.¹

Section 11.030 of the Parks and Wildlife Code provides:

- (a) The name and address and a telephone, social security, driver's license, bank account, credit card, or charge card number of a person who purchases customer products, licenses, or services from the department may not be

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

disclosed *except as authorized under this section or Section 12.0251.*
[Emphasis added.]

(b) Chapter 552, Government Code, does not apply to customer information described by Subsection (a).

(c) The commission by rule shall adopt policies relating to:

(1) the release of the customer information[.]

Parks & Wild. Code §11.030.

We find that a portion of the information that is responsive to the request for "any documents pertaining to the application for a commercial fishing license, along with any and all renewals" constitutes customer information, and thus is governed by section 11.030. Because subsection (b) of section 11.030 specifically excludes "customer information" from the provisions of Chapter 552 of the Government Code, we conclude that Chapter 552 does not govern the release of such information. However, section 11.030(c)(1) requires that the Parks and Wildlife Commission "by rule shall adopt policies relating to" the release of customer information. Accordingly, the department must adhere to the policies adopted by Parks and Wildlife Commission in determining the extent to which the "customer information" may be released to the requestor. For your convenience, we have marked the types of information that meet the definition of "customer information."

Section 11.030 is not applicable, however, to the remaining information in the application which does not constitute customer information. You also raise chapter 730 of the Transportation Code. Section 730.004 of the Transportation Code prohibits the release of "personal information" about any person obtained in connection with a motor vehicle record by an agency that maintains or compiles motor vehicle records, except under certain circumstances not present here. "Personal information" is defined as including an individual's social security number, driver identification number, name, address, and telephone number. *See* Transp. Code § 730.003(6). Accordingly, we conclude that chapter 730 of the Transportation Code is not applicable to the remaining non-customer information in the application. The department must, therefore, release to the requestor the non-customer information contained in the applications and renewal applications for commercial fishing licenses.

You claim that section 552.101 of the Government Code excepts the remainder of the submitted information, Attachment C, from public disclosure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." For information to be protected from public disclosure by the common-law right of privacy under section 552.101, the information must meet the criteria set out in *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert.*

denied, 430 U.S. 931 (1977). In *Industrial Foundation*, the Texas Supreme Court stated that information is excepted from disclosure if (1) the information contains highly intimate or embarrassing facts the release of which would be highly objectionable to a reasonable person and (2) the information is not of legitimate concern to the public. 540 S.W.2d at 685. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning a certain person. In this case, we believe that the individual's right to privacy has been implicated. Thus, where the named individual is a possible suspect, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. See *id.*

In summary, the department must adhere to the policies adopted by Parks and Wildlife Commission in determining the extent to which the "customer information" may be released to the requestor. The department must release the non-customer information in the applications to the requestor. Regarding the information submitted as Attachment C, where the named individual is a possible suspect, the department must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code.

Finally, you request that this office issue a previous determination for an individual's criminal history. At this time, we decline to issue a previous determination for criminal history information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

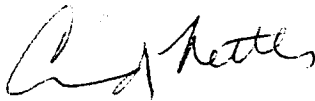
2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/seg

Ref: ID# 158250

Enc. Submitted documents

c: Ms. Donna L. Collins
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(w/o enclosures)